WP(C) 8269/2004
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

JUDGMENT AND ORDER

This is a unique case of graving private land with the active su pport of State/District administration showing the same to be for public purpose . The land involves is only 1 katha 5 lessa on which the respondents No. 3 and 4 had all along an eye and eventually they succeeded in grabbing the land through the district administration in the name of public purpose. However, in view of the interim protection provided by this Court, they could not take possession of the land.

2. The petitioners are the members of the same family and are the joint own ers of the plot of land in question, which is purely residential. With a view to construct residential building, they obtained necessary permission from the Gau hati Municipal Corporation way back in 1979. When necessary arrangements for con struction were being made, one Smti Parul Choudhury Bora, member of a political party wrongfully possessed the land by erecting a shed over it and started keepi ng her personal security guards. The request made by the petitioners to remove t he shed did not yield any result. Situated thus, the petitioners filed the Title Suit being T.S. No. 68/1985 through their attorney. The suit was decreed by the learned Assistant District Judge, No. 1, Guwahati by judgment and decree dated 29.8.1998.

3. Said Smti Bora filed an appeal being T.A. No. 4/1998 before the learned District Judge, Kamrup and the same was also dismissed by judgment dated 6.8.200 1. Thereafter she preferred second appeal being RSA No. 104/2001 before this Cou rt. However, later on, the appeal was withdrawn on 4.5.2005.

4. During the pendency of the aforesaid proceeding and when the petitioners could not construct the residential building due to ongoing litigation, they we re served with the notices purportedly issued under Section 9 (1) of the Land Ac quisition Act, 1894 stated to be in L.A. Case No. 10/1993 in respect of the afor esaid plot of land measuring 1 katha 5 lessa. By the said notices, the petitione rs were informed that the land has been acquired under Section 6 (1) of the Act and that the possession thereof would be taken over by the Deputy Commissioner, Kamrup (Urban) within 15 days from the date of the notice. It was also intimated that the concerned pattadars might file their application claiming compensation in respect of the acquired land.

5. According to the petitioners, prior to issuance of the aforesaid notices dated 31.9.2004, they were not issued with any other notices, nor they were awa re of the land acquisition proceeding. On receipt of the notices, they made enqu iries and having come to know about the Annexure-12, 13 and 14 orders, obtained the certified copies of the same. It is their case that, it is only through the said documents, they could come to know that the L.A. proceeding was initiated a t the instance of Durga Puja Udjapan Samity, a local entity (respondent No. 3). It is on record that the said Samity all along pressurized the petitioners to al low it to perform Durgapuja every year over the plot of land in question, althou gh, in the meantime civil dispute as aforesaid was pending with order of injunct ion. The petitioners have stated that the land has permanent boundary fencing wi th temporary houses and also plantations and thus it was not possible to allow t he said Samity to perform Durgapuja over the said land.

6. The petitioners have stated that since the said Samity failed in their d esign to take possession of the land in the name of Durgapuja, they adopted the indirect method through the State/ District machinery to grab the land in the na

me of acquisition. It will be pertinent to mention here that the Annexure-13 and 14 impugned notifications dated 19.7.2004 and 19.3.2004 respectively were purportedly issued under Section 6 and 4 of the Act. The public purpose was mentioned as for construction of Durgapuja Udjapan Samity. This truth came out inspite of the endeavor made by the respondents to give the colour of public purpose towards acquiring the land. This is because, as Lord Napier said - There is an idiom in truth which falsehood never can imitate .

7. The respondent No. 2 has filed the counter affidavit through the Additional Deputy Commissioner supporting the acquisition proceeding. According to him, due procedure was followed in acquiring the land and the same was initiated on the request of the Gauhati Municipal Corporation pursuant to the application filed by the said Durgapuja Udjapan Samity i.e. the respondent No. 3 represented by the respondent No. 4, its General Secretary. As per the affidavit, the said Samity made the request for allotment of the land for a children park in the locality. But in the aforesaid notifications, due to oversight the purpose was wrongly mentioned as for construction of Durgapuja Udjapan Samity. As per the affidavit, the petitioners were issued notice under Section 5 A after publishing the notifications under Section 4 (1) of the Act in the Assam Gazette. The affidavit also speaks of publication of the notification in two daily local newspapers. The affidavit mentions the Government letter dated 5.11.2003 to be the basis for initiating the land acquisition proceeding.

8. The respondents No. 3 and 4 have also filed their counter affidavit. Referring to its formation and registration in 2003-04, it has been stated that the society is engaged in the welfare of the entire locality consisting of about 500 families. They have stated about the difficulties being faced by the children of the locality in absence of any open space/play ground/park etc. It is in such circumstances they approached the authority for acquiring the land.

9. By Annexure-D letter dated 5.9.2003 annexed to the aforesaid affidavit, the Deputy Secretary to the Government of Assam in the revenue (LR) Department requested the Deputy Commissioner, Kamrup (M) to furnish a report as follows:

1. The status of the land proposed to be acquired.
2. The name of the requiring department.
3. Whether the matter of ownership over the land is subjudice as indicated in the petition enclosed.
4. The Chitha, Jamabandi, Tracemap etc., be furnished alongwith your report.

(Emphasis added)

10. It is important to note that the Government in the Revenue Department specifically sought for the clarification regarding Court case and the requiring Department. Such information was essential as the same had a bearing in ascertaining the feasibility, practicability and the essentiality of acquiring the land.

11. Interestingly, the Deputy Commissioner & Collector, Kamrup, Guwahati by Annexure-G order dated 17.12.2003 even before furnishing the required information for consideration of the Government not only formed the purported opinion regarding necessity to acquire the land, but acquired the same with immediate effect under purported authority of Section 4 (1) of the Act with further direction to do the needful as per provisions of Section 4 (1) and 6 (1) of the Act and to send the documents through the Gauhati Municipal Corporation for onward transmission to the Revenue (LR) Department for publication in official gazette.

12. In paragraph 9 of the affidavit, the said two respondents have admitted that the society has approached the authorities for allotment of land for public purpose. According to them the land has been acquired following the due procedu

re. Unlike the stand of the Deputy Commissioner that the land has been acquired for children park, it is the stand of the Samity that the same has been acquired for children play ground. By Annexure-C letter dated 1.9.2003 annexed to the counter affidavit, upon a reference to the letter of the Samity and others, the Land Acquisition Officer sought for instruction from the Deputy Secretary, Revenue (LR) Department as to whether the land could be acquired for Durgapuja Udjapan Samity under Section 3 (f) of the Act.

13. In Annexure-L letter dated 8.6.2004, addressed to the Commissioner, Gauhati Municipal Corporation by the Deputy Commissioner & Collector, Kamrup, the purpose for acquiring the land was mentioned as construction of play ground for children acquired for the said Durgapuja Udjapan Samity. In Annexure-M notice dated 27.7.2004 issued by the Land Acquisition Officer & Collector, the proposal of GMC at the initiation of the respondent No. 3 Samity for construction of children park and play ground in public interest was notified. However, this was preceded by the aforesaid Annexure-13 and 14 gazette notifications dated 19.7.2004 and 24.3.2004, in which the purpose was mentioned as for Durgapuja Udjapan Samity .

14. During the pendency of this proceeding a corrigendum has been issued on 19.4.2006 substituting the words for Durgapuja Udjapan Samity as for construction of children park . However, the same is yet to be published in the official gazette. This has been done inspite of the interim order passed on 28.4.2005 staying the further proceeding in L.A. Case No. 10/2003. Thus, the authority, which has issued the said corrigendum dated 19.4.2006 is prima facie guilty of contempt of this Court. The said authority is the Deputy Commissioner, Kamrup (M). Likewise, the Commissioner, GMC is also prima facie guilty of contempt of this Court in requesting the Government in the revenue (LR) Department to publish the corrigendum in the official gazette. Fortunately, the Deputy Secretary to the Government of Assam, Revenue (LR) Department by its letter dated 29.8.2006 apprised the Deputy Commissioner, Kamrup and the Commissioner, GMC that in view of the pendency of this proceeding it would not be possible to issue the corrigendum. These communications have been annexed to the counter affidavit filed by the respondent No. 3 and 4 as Annexures-O/1, O/2 and O/3 respectively.

15. The petitioners have filed an affidavit in reply to the affidavit in opposition filed by the respondents No. 3 and 4, wherein it has been mentioned that the Samity has been registered only to grab the land. Referring to the own stand of the said respondents that they represent the inhabitants of the locality (about 500 families), the petitioners have contended that the said inhabitants should first come forward to donate their own land for public purpose instead of utilizing the Government machinery for wrongful acquiring of the land of the petitioners. It has also been stated that there is a big playground of the Assam Engineering Institute distance of which is only ‰ kilometer from the locality. It has been denied that the Samity represents 500 families. It is the case of the petitioners that the entire acquisition proceeding is based on private purpose without there being any element of public purpose. It has also been stated that the area of land measuring 1 katha 5 lessa cannot cater the need of 500 families and the same cannot be used as children park/playground that too being situated in a residential area.

16. The petitioners have also filed affidavit in reply to the affidavit in opposition filed by the Deputy Commissioner. It has been asserted and reiterated that the petitioners were not at all aware of the acquisition proceeding till receipt of the notice under Section 9 (1) of the Act. It has been stated that no notice under Section 4 (1) and 5 A of the Act was ever served on the petitioners. It has further been stated that the substance of the notification purportedly issued under Section 4 (1) of the Act was also not published at convenient places of the locality as required.

17. Referring to the statements made in paragraph 6 of the affidavit, the petitioners have stated that such statements would go to show that the acquisition proceeding was initiated at the behest of a private party, namely the Durgapuja Udjapan Samity for the purpose of Durgapuja etc. and the same cannot be said to be a public purpose. It has been stated that construction of Children Park is eyewash, which is amply demonstrated in the aforementioned Annexure-13 and 14 notifications dated 19.7.2004 and 24.3.2004.

18. I have heard Mr. A.C. Sarma, learned counsel for the petitioners as well as Mr. G.N. Sahewalla, learned Sr. Counsel, assisted by Mr. B. Sinha, learned counsel for the respondents No. 3 and 4. I have also heard Ms. R. Chakraborty, learned State Counsel, representing the official respondents. I have gone through the records produced by the respondents. I have bestowed my best of consideration to the rival submissions of the learned counsel and the materials available on records.

19. Mr. Sarrma, learned counsel for the petiitoenr, in support of his submission, has placed reliance on the following Decisions:

AIR 1995 SC 1549 (Rambhai Lakhabai Bhakt Vs. State of Gujarat)
AIR 1993 J&K 77 (Parkasho Debi Vs. State of J & K)
AIR 1981 Karnataka 111 (Balagouda Nijagouda Patil Vs. State of Karnataka)
AIR 1976 Gujarat 84 (Mangan Bhai Vanarshibhai Petel Vs. State of Gujarat)
AIR 1982 Allahabad 435 (Azadul Bux Vs. State of U.P.)
AIR 1994 MP 74 (Chaitram Verma Vs. Land Acquisition Officer)
AIR 1962 MP 80 (Shyam Behari Vs. State of M.P.)
AIR 1981 SC 951 (Union of India Vs. R.C. Jain)
AIR 1982 Delhi 462 (Union of India Vs. Nand Kishore)

20. The land in question measures only 1 katha 5 lecha. It is in this context learned counsel for the petitioners has contended that the same cannot cater the needs of a children park or play ground and that too in a residential area. At the time when the acquisition proceeding was initiated at the behest of the respondents No. 3 and 4, the land was the subject of dispute in T.S. No. 68/1985. The said proceeding has come to an end only on 4.5.2005. By Annexure- D letter dated 5.9.2003 annexed to the counter affidavit filed by the respondents No. 3 and 4, the Government of Assam in the Revenue (LR) Department called for a report from the Deputy Commissioner, amongst others on the name of the requiring department and whether the matter of ownership over the land was subjudice as indicated in the petition. However, inspite of the fact that the proceedings relating to the aforesaid title suit was still going on and the matter was subjudice before the Court, the respondents ignored the same and started the acquisition proceeding.

21. In response to the aforesaid letter dated 5.9.2003, the LAO by his Annexure-E letter dated 31.10.2003 while forwarding the report also enclosed the copy of the letter dated 4.10.2002 of the respondents No. 3 and 4. The records (File No. KRA-38/2002) relating to the acquisition proceeding have revealed that the entire exercise towards acquiring the land was carried out on the basis of the application dated 7.9.2002 of the respondents No. 3 and 4 addressed to the Deputy Commissioner with the endorsement of the Minister, Education & Implementation of Assam Accord. The endorsement reads - DC (Kamrup) PL. examine the matter and take n/a at the earliest.

22. The above letter refers to their earlier letter agreeing to bear the compensation amount in respect of the acquired land. The earlier letters dated 16.1.2002 and 29.6.2002 addressed to the Gauhati Municipal Corporation reveal the real purpose of the prayer for acquisition of the land. In these two letters, the respondents No. 3 and 4 made the request for acquiring the land for the purpose

of holding meetings, celebrating Bihu, Durgapuja etc. In their applications, it was reflected that there was dispute relating to ownership of the land. The purpose reflected in the applications cannot be said to be public purpose within the meaning of the Land Acquisition Act, 1894.

23. The land acquisition proceeding was processed on the basis of the aforesaid applications of the respondents No. 3 and 4. In the Communications by and between the GMC and the Deputy Commissioner, the aforesaid purpose for which the land sought to be acquired was mentioned. When the LAO sought for the opinion of the Government pleader, the said Government pleader by his opinion dated 13.8.2003 opined that the land could be acquired by the appropriate Government when it was needed or likely to be needed for public purpose. Referring to the definition of public purpose in Section 3 (f) of the Act, the said Government pleader indicated in his opinion that the letter by which the opinion was sought for was silent about the requirement of the land for public purpose. The advice was to take up the matter with the Government.

24. The records have further revealed that the LAO by his letter dated 1.9.2003 while forwarding the applications received from the respondents No. 3 and 4 and the aforesaid opinion of the Government pleader, requested the Government for furnishing necessary instruction whether the land could be acquired for the respondents No. 3 and 4 i.e. Durgapuja Udjapan Samity under Section 3 (f) of the Act. In response to this letter, the Deputy Secretary, Revenue (LR) by his aforesaid letter dated 5.9.2003 called for a report regarding status of the land, name of the requiring department and whether the matter of ownership over the land was subjudice. There is nothing to indicate that there was any response to the queries. On the other hand, the LAO by his letter dated 26.9.2003 sent the matter to the Circle Officer, Gauhati Revenue Circle clearly indicating that the land was to be acquired for Durgapuja Udjapan Samity.

25. The aforesaid File has further revealed that it is the respondents No. 3 and 4, who all along pursued the matter for acquiring the land by keeping constant touch with the respondents. They also sworn an affidavit dated 1.3.2004 undertaking to bear all expenditures like compensation and administrative costs for acquiring the land. In response to this affidavit, the Commissioner, GMC by his letter dated 8.3.2004 addressed to the Commissioner & Secretary, Revenue furnished intimation that the respondents No. 3 and 4 would bear all expenses and that they would be responsible for all legal problems involving the land in question.

26. It is on the above basis, the proceeding was initiated. There is no manner of doubt that it is the respondents No. 3 and 4, which wanted to grab the land in the name of public purpose. There was dispute from before regarding celebration of Durgapuja by installing pandel etc. on the land belonging to the petitioners. It is on record that the petitioners all along objected to holding of Durgapuja on their said land. As a consequence, and taking advantage of the petitioners absence from the land and also that a dispute was on in respect of ownership of the land, the respondents No. 3 and 4 evolved the devise to get the land in the name of public purpose, Surprisingly enough, both the State administration and the District administration danced to their tune, perhaps because of the fact that the same had the backing of the Minister, Education & Assam Accord Implementation. This is a unique case of misusing the administrative machineries for a private purpose in the name of public purpose.

27. The expression public purpose has been defined in Section 3 (f) of the Act. It is true that the definition is inclusive one, but the purpose for which a land is acquired must be akin to the enumerations made in the definition. The preamble of the Act I of 1894 explains the reason which led to its enactment - for the acquisition of land needed for public purposes or for companies and for determining the amount of compensation to be made on such acquisition. The pro

visions of the Act cannot be put to be used in furtherance of private speculations and that the local Government should not be subject to pressure which might some time be difficult to resist on behalf of the enterprises in which the public have no interest.

28. Section 4 of the Act is the starting point of acquisition and which compels the existence of a public purpose as a pre-requisite for acquisition. Section 6 provides for declaration when the Government is satisfied that land is needed for public purpose or for a company. As has been held by the Apex Court in Srinivasa Co-operative House Building Society Limited Vs. Madan Gurumurthy Shastri reported in (1994) 4 SCC 675, the acquisition in question must indicate that it was the welfare of the people and not to benefit a few individuals or group of individuals jointly or collectively. Therefore, acquisition for anything, which is not for a public purpose, cannot be done compulsorily. In State of Bombay Vs. Nanji reported in AIR 1956 SC 294, it has been held that the phrase public purpose whatever it may mean, must include a purpose, that is an object or aim, in which the general interest of the community as opposed to particular interest of individuals, is concerned.

29. In the instant case, the petitioners could come to know about the land acquisition proceeding only when the Annexure-9, 10 and 11 notices under Section 9 (1) of the Act were served on them. It was only thereafter they could come to know about the Annexure-12 order dated 17.12.2003 passed by the Deputy Commissioner & Collector, Kamrup followed by Annexure-13 and 14 gazette notifications dated 19.7.2004 and 24.3.2004. In both the notifications, the public purpose has been mentioned as construction of Durgapuja Udjapan Samity. Prior to that the Annexure-12 order dated 17.12.2003 was passed acquiring the land in public interest. It was only thereafter, Section 4 and 6 notifications were issued. It is not discernible as to under what provisions of law the Annexure-12 order dated 17.12.2003 was passed.

30. The Annexure-13 dated 19.7.2004 notification issued under Section 6 of the Act speaks of requirement of the land to the Government at the public expense for a public purpose, which is stated to be construction of Durgapuja Udjapan Samity. However, even before further action was taken in furtherance to that notification, the Deputy Commissioner & Collector acquired the land by the aforesaid order dated 17.12.2003. Under Section 6 of the Act, the fund out of which the cost of compensation is to be met is the public revenue or some fund under control of a local authority, in case of acquisition for a public purpose. So, it must be either a fund belonging to Government treasury or to some other statutory bodies. A fund raised by villagers cannot attract this provision, even if it is deposited into State treasury (Rf. AIR 1968 Manipur 45 - Heisnan Chanjan Singh Vs. Union Territory of Manipur).

31. Public revenues are the money lying in the Government treasuries operating by Government department as such. It has been held by the Full Bench of this Court in Chandra Kanta Sharma Vs. Deputy Commissioner & Collector, Nagaon reported in AIR 1971 Assam & Nagaland 1 (FB), that when the entire amount is paid by a school authority for land acquired for its benefit, it cannot be said that it has come out of public revenues, merely because it was deposited in Government Treasury.

32. In the instant case, as has been noticed above, it is the respondent No. 3 and 4, who by swearing an affidavit have undertaken to bear all the expenses including payment of compensation, which has been duly taken note of by the authority. It is on that basis the entire proceeding progressed. Thus, it cannot be said that the amount involved is to be paid out of public revenues or some fund controlled or managed by a local authority. This position is antithesis to the requirement of the proviso to Section 6 of the Act.

33. Section 4 of the Act, apart from requiring publication of preliminary notification in the official gazette and two daily newspapers also requires the Collector to cause public notice of the substance of such notification to be given at convenient places in the locality. Admittedly, this was not done in the instant case. Section 5 A provides for hearing of objections. This was also not followed in the instant case. The petitioners were not given any hearing. Section 45 of the Act provides for service of notices under the Act. Whenever it may be practicable, the service of notice shall be made on the person named in the notices. This was also not done in the instant case.

34. From the aforesaid materials, the irresistible conclusion is that the acquisition was not really for public purpose and the same has been done in colourable exercise of power by the authorities conferred on it by the Act. There is no manner of doubt that the acquisition has been done only to benefit the respondents No. 3 and 4. No private party should be benefited in the name of public purpose. This aspect of the matter was to some extent considered by the Apex Court in Surya Pal Singh Vs. State of U.P. reported in 1952 SCR 1056 and also in State of Bihar Vs. Kameswar Singh reported in AIR 1952 SC 252. In the later case, the Apex Court observed - the point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from private interests of the individual. Dr. Ambedkar is right in saying that in the concept of public purpose there is a negative element in that no private interest can be created in the property acquired compulsorily, in other words, property of A cannot be acquired to be given to B for his own private purposes and that there is a positive element in the concept that the property taken must be for public benefit. The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose. There is no power in the sovereign to acquire private property in order to given it to private persons .

35. In the instant case, it is indisputably clear that the primary object is the personal gain of the respondents No. 3 and 4 and the public benefit resulting there from is too remote. The purpose cannot be said to be a public purpose.

36. The decisions on which Mr. Sarma, learned counsel for the petitioners have placed reliance are on the manner and method of issuance of notices, urgency, compensation, what constitutes local authority, public purpose etc. The facts and findings recorded above, find support from the decisions cited by the learned counsel for the petitioners. The particular File in which the land acquisition proceeding has been initiated is full of communications made by the respondents No. 3 and 4 pressurizing the authorities to acquire the land on their behalf. They even undertook by swearing affidavit that the entire expenses including administrative expenses and compensation would be born by them. This unholy interest shown by them cannot be said to be for public purpose.

37. During the course of hearing, learned counsel for the respondents No. 3 and 4 was requested to obtain instruction as to whether the members represented by them, who are the local inhabitants are ready to spare their own land towards construction of a park or a play ground in its real sense. Upon instruction, the submission was in the negative. None of the members of the respondent No. 3 is ready to part with his land for the public purpose about which much have been said by the said respondent. Ironically, the State/District administration also danced to their tune. Thus, here is a case, in which while the respondents No. 3 and 4 are not ready and willing to part with their land for a public purpose, but they keep their eyes on the strip of the land of the petitioners measuring only 1 katha 5 lessa on which the petitioners want to construct their residential house. This is how, the respondents No. 3 and 4 want to serve public purpose.

38. The proceedings book of the respondent No. 3 was summoned and on perusal of the same, only revelation made is that its only object and purpose is to celebrate Durgapuja and collection of money for the purpose. No other purpose is di

scernible from the proceeding book, although, the said respondents blowing its t rumpet have talked about undertaking public utility services. The small strip of land cannot serve the public purpose like construction of a children park and/o r children play ground.

39. As noted above, all out efforts of the respondents to give colour of pub lic purpose went in vain with the publication of the Annexure 13 and 14 notifica tions dated 19.7.2007 and 24.3.2004, when the same declared the public purpose a s construction of Durgapuja Udjapan Samity. As observed by Joseph parker - False hood is in a hurry; it may be at any moment detected and punished; truth is calm , serene; its judgment is on high; its king cometh out of the chambers of eterni ty.

40. For all the foregoing reasons, entire proceeding in L.A. Case No. 10/200 3 including the impugned notifications issued there under is set aside and quash ed. The petitioner shall enjoy the land being the owners and possessors of the s ame.

41. Writ petition is allowed awarding costs of Rs. 10,000/- to be borne by t he respondent No. 3 and the respondent No. 2 i.e. the Deputy Commissioner, Kamru p (M) in equal shares.